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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SIX

THE PEOPLE,

Plaintiff and Respondent,

v.

JEFFREY L. EMMONS,

Defendant and Appellant.

2d Crim. No. B270694
(Super. Ct. No. 2015036164)
(Ventura County)

Jeffrey L. Emmons appeals from the judgment following his guilty plea to felony possession for sale of a controlled substance and resisting a peace officer. (Health & Saf. Code, § 11378; Pen. Code, § 148, subd. (a)(1).)¹ He admitted allegations that he suffered two prior prison terms and three prior controlled substance convictions. (§ 667.5, subd. (b); Health & Saf. Code, § 11370.2, subd. (c).) He agreed to a sentence of seven years in jail, with no concluding portion suspended for

¹ All statutory references are to the Penal Code unless otherwise stated.

mandatory supervision (no “split sentence”). (§ 1170, subd. (h)(5).)

Emmons’s contention that the trial court abused its discretion when it denied a split sentence is not reviewable because Emmons did not obtain a certificate of probable cause. (§ 1237.5; Cal. Rules of Court, rule 8.304(b) [certificate of probable cause required for appeal from judgment after guilty plea, unless appeal is based on section 1538.5 or grounds that “arose after entry of the plea and do not affect the plea’s validity”].) Even if, as Emmons contends, his plea left open the court’s option to impose a split sentence, the court did not abuse its discretion when it refused to do so.

Emmons acknowledged in the written plea agreement that he would be sentenced to seven years in jail, with no split sentence. The plea form states the “court’s position on sentence,” is “7 yrs. no m/s,” i.e., no portion suspended for “mandatory supervision.” Emmons’s attorney explained the terms of the agreement to him. Before the trial court accepted Emmons’s plea, it said to him, “I told your attorney that when you’re sentenced, based upon what I know, you’re going to receive seven years. I think that’s the mitigated term, two [section 667.5, subdivision] (b) priors plus one of the felony prior sales convictions, for a total of seven. [¶] But you’re not going to have any mandatory supervision after your sentence. You’re just going to do seven years in at half time.” Emmons replied, “Yes.” The court asked, “Has anything else been represented to you?” and Emmons replied, “No.”

Emmons contends the statement, “based on what I know,” left open the possibility that the court would consider a split sentence based on new information at the sentencing

hearing. He points out that at sentencing the court gave reasons for denying a split sentence, indicating that it was exercising discretion. But even if the court exercised discretion after entry of the plea, Emmons's appeal is without merit. The trial court acted within its discretion when it denied a split sentence in the interest of justice because Emmons's long history of similar crimes and poor performance on past supervision support its conclusion that mandatory supervision is not appropriate. (§ 1170, subd. (h)(5)(A); Cal. Rules of Court, rule 4.415(b).)

DISPOSITION

The judgment is affirmed.

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TANGEMAN, J.

We concur:

GILBERT, P. J.

YEGAN, J.

Charles W. Campbell, Jr. Judge

Superior Court County of Ventura

Richard B. Lennon, under appointment by the Court
of Appeal, for Defendant and Appellant.

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